



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 22 2013

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7678 5907  
RETURN RECEIPT REQUESTED

Ex. 6

Ex. 6 (Personal Privacy)ork, Inc.

Ex. 6

Subject: Exemption (b) (6) Pork Order for Compliance Under 33 U.S.C. §§ 1318 and 1319(a)  
Docket No. V-W-13-AO-09

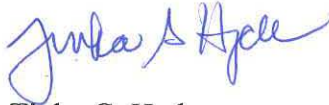
Dear Ex. 6

Per your request, on April 23, 2013, the U.S. Environmental Protection Agency held a conference call with you regarding the FOIA Exemption 6 (Personal Privacy) Pork Order for Compliance (Order) issued on April 12, 2013. During our conference call, you did not contest the validity of the Order, but expressed interest in not having to remove the dam structure that you built in the stream. The dam structure was built without a permit and the Order required that you remove it. You stated that you wished to pursue an After-the-Fact Permit from the Army Corp of Engineers (ACOE), which also requires a State 401 Water Quality Certification or a waiver of this certification from the Illinois Department of Natural Resources (IDNR). EPA has allowed you time to request this permit and certification or waiver of certification.

On May 22, 2013, you provided to EPA a letter from the ACOE, stating that the dam and the dam building activity is authorized under an existing nationwide permit for minor discharges. On July 11, 2013, you forwarded a letter from Illinois Department of Natural Resources stating that a State 401 Water Quality Certification was not required. Accordingly, under paragraph 78 of the Order, EPA has determined that the Order should be modified and under paragraph 80, the Order will be effective 7 calendar days after the date of this determination.

If you have any questions concerning this matter, please contact Joan Rogers of my staff at (312) 886-2785.

Sincerely,



Tinka G. Hyde  
Director, Water Division

cc: Bud Bridgewater, Illinois Environmental Protection Agency  
Jeff Holste, Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**FOIA Exemption 6 (Personal Privacy) Pork, Inc.  
Rural Route 1 Box 158  
Sigel, Illinois 62462**

**Respondent**

**MODIFIED ORDER FOR COMPLIANCE  
UNDER SECTIONS 308 AND 309(a)  
OF THE CLEAN WATER ACT**

**DOCKET NO: V-W-13-AO-09**

The U.S. Environmental Protection Agency (EPA) issues this Order (Order) to **FOIA Exempt** Pork, Inc. (Respondent) under the authority of Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a). The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA Region 5, who has redelegated this authority to the Director of the Water Division, EPA, Region 5.

**I. INTRODUCTION**

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.23(a) and (d) the owner or operator of a concentrated animal feeding operation (CAFO) which discharges any manure, litter, or process wastewater must seek coverage under an NPDES permit.
3. Pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), whenever the Administrator of EPA finds a person in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator of EPA may issue an order requiring that person to comply with the provisions of the CWA and the requirements of the permit.
4. Pursuant to 33 U.S.C. § 1318, EPA may require the owner or operator of any point source to establish and maintain records, annual reports; install, use or maintain monitoring equipment or methods; sample effluent; and provide other information as may be reasonably required.
5. EPA has approved the State of Illinois program to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Illinois Environmental Protection Agency (IEPA) is the NPDES permitting authority for the State of Illinois. EPA retains the authority to enforce the CWA in Illinois.

## II. DEFINITIONS

6. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.
7. "Animal feeding operation" or "AFO" means "a lot or facility where . . . (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and, (ii) Crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility." *See* 40 C.F.R. § 122.23(b)(1).
8. "Concentrated animal feeding operation" or "CAFO:" means an AFO that is defined as, *inter alia*, a Large CAFO or Medium CAFO.... Two or more AFOs under common ownership are considered to be a single AFO for the purpose of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. *See* 40 C.F.R. § 122.23(b)(2).
9. "Discharge" or "discharge of a pollutant" means, among other things, any addition of any pollutant to navigable waters from any point source. *See* Sections 502(12), 502 (16) of the CWA, 33 U.S.C. §§ 1362(12), 1362(16); 40 C.F.R. § 122.2.
10. "Land application area" means land under the control of the Respondent, whether that land is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied. *See* 40 C.F.R. § 122.23(b)(3).
11. "Large CAFO" means an animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following ranges: 1,000 cattle other than mature dairy cows or veal calves; 700 mature dairy cows, whether milked or dry; 1,000 veal calves; 2,500 swine each weighing 55 pounds or more; 10,000 swine each weighing less than 55 pounds; 500 horses; 10,000 sheep or lambs; 55,000 turkeys; 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; 125,000 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system; 82,000 laying hens if the AFO uses other than a liquid manure handling system; 30,000 ducks if the AFO uses other than a liquid manure handling system; or 5,000 ducks if the AFO uses a liquid manure handling system; *See* 40 C.F.R. § 122.23(b)(4).
12. "Manure" means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal. *See* 40 C.F.R. § 122.23(b)(5).
13. "Navigable waters" means the waters of the United States. *See* Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
14. "Nutrient management plan" means the plan described in and required by Sections IV.C. and IV.D. of this Order.

15. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.
16. "Person" means, among other things, an individual, association, partnership, or corporation. *See* Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
17. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, ... container... [or] concentrated animal feeding operation ... from which pollutants are or may be discharged." *See* Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
18. "Pollutant" means, among other things, dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. *See* Section 502(6) of the CWA, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.
19. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. *See* 40 C.F.R. § 122.23(b)(7).
20. "Production area" means that part of the Site that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. *See* 40 C.F.R. § 122.23(b)(8).
21. "Site" shall mean the facility or facilities owned or operated by Respondent located at or about Rural Route 1 Box 158, including but not limited to the land application area, the production area, and adjacent land issued in connection with the land application area and/or production area.

22. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
- a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
  - b. all interstate waters, including interstate wetlands;
  - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:
    - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
    - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    - (3) which are or could be used for industrial purposes by industries in interstate commerce;
  - d. all impoundments of waters otherwise defined as waters of the United States under this definition;
  - e. tributaries of waters identified in Subparagraphs (a) through (d) of this definition; and
  - f. wetlands adjacent to the waters identified above.

### **III. FINDINGS**

23. Respondent is a person who owns or operates a swine facility located at the Site.
24. The Site is an animal feeding operation because:
- a. the Site includes lots or facilities where animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
  - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
25. The Site is a CAFO and a Large CAFO because the Site stables or confines as many as or more than 2,500 swine each weighing 55 pounds.

26. On July 10, 2012 and November 13, 2012, personnel from U.S. Environmental Protection Agency (EPA) conducted inspections at the Site (the Inspections).
27. During the Inspections, EPA personnel identified a manure and process wastewater discharge to a perennial unnamed stream. This discharge had three sources, including:
  1. Manure and process wastewater from the Compost Pile flows over the surface through surface pathways to the perennial unnamed stream. From the west side of the Compost Pile, the flow enters a ditch before entering the perennial unnamed stream approximately forty feet to the south.
  2. Manure and process wastewater flowed from the receiving pen on the east side of the Finishers Barn #2 along a concrete channel to the southeast. At the end of the concrete channel, the manure and process wastewater entered a pipe which transported the flow to a ditch which flowed approximately forty feet to the perennial unnamed stream.
  3. Process wastewater discharges to the ditch and then to the perennial unnamed stream approximately forty feet to the south from the pipe that was identified as a storm water pipe. Sample analysis indicates the presence of pollutants.
28. The perennial unnamed stream is tributary to perennial Henry Creek approximately 3.5 miles downstream from the stream. Approximately 1.8 miles downstream from the confluence of the perennial unnamed stream and Henry Creek, Henry Creek joins perennial Green Creek. The flow goes approximately 4.9 miles down Green Creek to the Little Wabash River, and then 196 miles to the Wabash River. The Little Wabash River is a Traditional Navigable Water 15.8 miles from the confluence with the Wabash River. The Little Wabash River at the confluence with Green Creek has been assessed and is listed on the 303(d) list of impaired waters. It is impaired for dissolved oxygen and mercury.
29. The perennial unnamed stream, Henry Creek, Green Creek, the Little Wabash River and the Wabash River are each a water of the United States.
30. The Site is a point source, as defined in 40 C.F.R. §122.2.
31. The discharges described in Paragraph 27 are discharges of pollutant(s).
32. As of July 10, 2012 and November 13, 2012, Respondent did not have, and had not applied for, an NPDES permit for the discharge of pollutants from the Site.
33. As a CAFO which discharges, the Site is subject to the NPDES permitting requirements of Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.
34. As a Large CAFO with over 2500 swine over 55 pounds, the Site is subject to the effluent guidelines of 40 C.F.R. Part 412.

35. By discharging pollutants from the Site without an NPDES permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
36. By discharging pollutants from the Site without having applied for an NPDES permit, Respondent violated 33 U.S.C. § 1318 and 40 C.F.R. § 122.23(d).

#### **IV. COMPLIANCE REQUIREMENTS**

##### **A. Notification of Intent to Comply**

37. Within 10 calendar days of the effective date of this Order, Respondent shall submit a written certification that it intends to comply with this Order.

##### **B. Interim Measures**

38. Upon the effective date of this Order, Respondent shall cease all unpermitted discharges from the Site.
39. Upon the effective date of this Order, Respondent shall implement interim measures to eliminate all unpermitted discharges from the Site.
40. Respondent shall operate and maintain the interim measures until Respondent completes construction and begins operation of all storage structures required by the Nutrient Management Plan under Section IV.D. of this Order.

##### **C. NPDES Permit**

41. Within 90 calendar days of the effective date of this Order, Respondent shall submit to EPA a detailed plan (Permit Compliance Plan) which describes the actions Respondent has taken or will take to prepare and submit a complete NPDES permit application for the Site (Permit Application) to IEPA. In the Permit Compliance Plan, Respondent shall:
  - a. Provide a schedule for development of the nutrient management plan, as described in Paragraph 49, and for construction of all controls required by the nutrient management plan;
  - b. Identify all design costs, capital costs, and annual operation and maintenance, and costs associated with the controls required by the nutrient management plan; and
  - c. Include a schedule for submitting a complete Permit Application to IEPA after construction of all controls required by the nutrient management plan.
42. The Permit Compliance Plan shall provide for submittal of the Permit Application not later than 270 days after the effective date of this Order unless otherwise approved by EPA.



43. EPA will review the Permit Compliance Plan and submit written comments on the Permit Compliance Plan to Respondent.
44. Respondent shall incorporate EPA's comments into the Permit Compliance Plan, and in accordance with the schedule set forth in the Permit Compliance Plan, Respondent shall submit the Permit Application to IEPA. The Permit Application shall include all information required by this Order. At the same time that it submits the Permit Application to IEPA, Respondent shall submit a copy of the Permit Application to EPA.
45. The Permit Application may be either an application for an individual permit or a Notice of Intent for coverage under Illinois General NPDES Permit No. ILA01 (October 20, 2009).
46. In the Permit Application, Respondent shall provide:
  - a. all information required by EPA Forms 1 and 2B. Those forms can be obtained on the Internet at the following addresses:  
  
Form 1: [http://www.epa.gov/npdes/pubs/form\\_1.pdf](http://www.epa.gov/npdes/pubs/form_1.pdf)  
  
Form 2B: [http://www.epa.gov/npdes/pubs/cafo\\_fedregstr\\_form2b.pdf](http://www.epa.gov/npdes/pubs/cafo_fedregstr_form2b.pdf);
  - b. a topographic map indicating the locations of the production area and land application area; and
  - c. a nutrient management plan that satisfies the requirements of Section IV.D. of this Order.
47. In addition to the information required by Paragraph 46, Respondent shall include in the Permit Application any additional information required by IEPA.
48. Within 10 calendar days of receiving a final NPDES permit from IEPA, Respondent shall submit a copy of that final permit to EPA.

**D. Nutrient Management**

**General Requirements**

49. The nutrient management plan must:
  - a. be based on a field-specific assessments of the potential for nitrogen and phosphorous transport from each field in the land application area and shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorous movement to surface waters;
  - b. include procedures in accordance with Paragraphs 57-61 of this Order for the operation and maintenance of structures to ensure the adequate storage of manure, litter, and process wastewater generated at the production area;

- c. ensure that mortalities (*i.e.*, dead animals) are:
  - (1) not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat mortalities; and
  - (2) handled in such ways as to prevent the discharge of pollutants to surface water;
- d. ensure that clean water is diverted, as appropriate, from the production area;
- e. prevent direct contact of confined animals with waters of the United States;
- f. ensure that chemical wastes and other non-livestock wastes handled on-site are not disposed of in the production area or any manure, litter, process wastewater, or storm water storage or treatment system unless such system is specifically designed to treat such chemicals and other contaminants;
- g. identify site-specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control discharges of manure, litter, or process wastewater to waters of the United States;
- h. identify protocols for appropriate testing of manure, litter, process wastewater, and soil, in accordance with this Order;
- i. establish protocols to land apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and
- j. identify specific records that will be maintained to document the implementation and management of the requirements of this Order.

### **Land Application Requirements**

#### **Nutrient Management Limitations**

- 50. Upon the effective date of this Order, Respondent shall not land apply manure, litter, and process wastewater closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. However, this requirement shall not apply provided that Respondent either:
  - a. imposes a 35-foot wide vegetated buffer on which Respondent will not land apply manure, litter, or process wastewater; or
  - b. demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

51. The nutrient management plan must demonstrate how Respondent will comply with the provisions of 40 C.F.R. § 122.42(e)(5).

**Sampling for Land Application.**

52. After the effective date of this Order, and in accordance with 40 C.F.R. § 412.4(c)(3), Respondent shall conduct analyses at least annually of representative samples of any manure, litter, and process wastewater to be land applied.
53. After the effective date of this Order, and in accordance with 40 C.F.R. § 412.4(c)(3), for each field in the land application area to which Respondent applies manure, litter, or process wastewater, Respondent shall sample and analyze the soil at that field for phosphorous content a minimum of once every five years.

**Land Application Records**

54. After the effective date of this Order, Respondent shall record the following information for each day during which Respondent land applies manure, litter, or process wastewater to the land application area. These records shall separately address each field at which land application occurs:
- a. the location of the field;
  - b. the size of the field;
  - c. expected crop yields;
  - d. the date and time manure, litter, or process wastewater is applied;
  - e. an estimate of the amount of precipitation 24 hours prior to, and for 24 hours after, the application;
  - f. soil water conditions at the time of each land application (*e.g.*, dry, saturated, flooded, frozen, snow-covered);
  - g. test methods used to sample and analyze manure, litter, process wastewater, and soil;
  - h. explanation of the basis for determining application rates for manure, litter, and process wastewater;
  - i. the amount of manure, litter, or process wastewater applied in either gallons, net tons, or dry tons per acre;

- j. calculations showing the total nitrogen and phosphorus to be applied, including sources other than manure, litter, or process wastewater;
- k. the total amount of nitrogen and phosphorus actually applied, including documentation of calculations used to determine the total amount applied; and
- l. the method used to apply the manure, litter, or process wastewater (e.g., surface, surface with incorporation, injection, etc.).

#### **Transfers of Manure, Litter or Process Waste Water to Other Persons**

- 55. After the effective date of this Order, if Respondent transfers manure, litter, or process wastewater to another person, Respondent shall create a record of the transfer. For each transfer, the transfer record shall indicate the date of the transfer, the name, and address of the recipient of the transfer, and the approximate amount of manure, litter, or process wastewater transferred.
- 56. After the effective date of this Order, prior to transferring manure, litter, or process wastewater to another person, Respondent shall provide that person with the most current annual nutrient analysis for that manure, litter, or process wastewater.

#### **Storage of Manure, Litter and Process Wastewater**

- 57. The nutrient management plan shall include protocols for the storage of manure, litter and process wastewater and shall provide for the operation and maintenance of structures (e.g., anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, etc.) to be used at the Site for manure, litter, and process wastewater storage.
- 58. The storage structures shall have sufficient volume such that no manure, litter, or process wastewater discharges will occur from the production area, except when precipitation causes an overflow of manure, litter, or process wastewater from structures that are designed, constructed, and maintained to contain all manure, litter, and process wastewater, including runoff and direct precipitation from a 25-year, 24-hour (or greater) rainfall event. At a minimum, the structures must have a volume sufficient to store all of the following amounts:
  - a. normal precipitation (less evaporation) on the surface of the structures during the periods contemplated in this Order;
  - b. normal runoff during the periods contemplated in this Order from the production area and any upslope areas from which the clean runoff is not diverted around the production area;
  - c. residuals that remain after materials are removed from the structures;
  - d. all manure, litter, and process wastewater generated during periods when land application does not occur;

- e. direct precipitation on the surface of the structure and runoff to the structure from a 25-year, 24-hour rainfall event; and
  - f. for earthen open surface liquid storage structures other than those equipped with an engineered stable overflow point such that structural failure will not occur during an overflow, one foot of freeboard above the capacity necessary to contain the direct precipitation and runoff from a 25-year, 24-hour rainfall event.
59. If the nutrient management plan provides for a storage volume that is less than the volume of manure, litter, and process wastewater that Respondent reasonably expects to add to the structure(s) during 180 days of continuous storage with no land application, Respondent shall include in the nutrient management plan a technical analysis which demonstrates that the lesser volume will assure compliance with this Order.
60. Dewatering and Solids Removal
- a. The nutrient management plan shall include criteria and procedures for the dewatering of, and removal of solid material from, all storage structures identified in the nutrient management plan, as necessary to ensure that sufficient storage volume remains in the storage structures to comply with this Order at all times. Any land application of materials removed from the storage structures shall be performed in accordance with the requirements of this Order.
  - b. Respondent shall measure and record the amounts of material removed from the storage structures.
61. Capacity Depth Markers: All storage structures identified in the nutrient management plan shall be equipped with permanent capacity depth markers. In accordance with 40 C.F.R. § 412.37(a)(2), the permanent capacity depth markers shall be clearly marked to indicate the applicable capacity required below:
- a. the minimum capacity necessary to contain the runoff and direct precipitation of a 25-year, 24-hour rainfall event; and
  - b. for any earthen open surface liquid storage structures, one foot of freeboard above the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year 24-hour rainfall event, except that this provision shall not apply to any earthen open surface liquid storage structure equipped with an engineered stable overflow point such that structural failure will not occur during an overflow.

**E. Site Inspections**

62. Upon the effective date of this Order, the Respondent shall conduct the following Inspections:
- a. daily inspections of water supply lines, including drinking water or cooling water lines;

- b. weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the containment structures;
  - c. weekly inspections of the storage structures;
  - d. weekly determinations of the depth of the manure and process wastewater (and amount of freeboard, where required) in all open surface liquid storage structures as indicated by the capacity depth markers required by this Order; and
  - e. periodic inspections of equipment used for the land application of manure, litter, or process wastewater.
63. Respondent shall correct any deficiencies identified through the inspections conducted pursuant to this Subsection as soon as possible.
64. Respondent shall prepare and maintain records of each inspection conducted pursuant to this Subsection. Respondent shall record the following information for each weekly inspection:
- a. the date of each inspection;
  - b. the amount of freeboard in each storage structure during each inspection;
  - c. any deficiencies noted during each inspection and the actions taken to correct those deficiencies; and
  - d. for any deficiencies not corrected within 30 days of discovery, an explanation of the factors preventing immediate correction.

**F. Discharge Minimization and Notification**

65. Within 30 calendar days of the effective date of this Order, Respondent shall post at the Site procedures to effectively respond to any spill or discharge to waters of the United States, and shall ensure that all employees are aware of, and follow, those procedures. The posted procedures shall contain detailed response instructions which shall include, but not be limited to, the names of officials to be notified, state and federal agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.
66. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the Site, and any such discharges are subject to enforcement. If for any reason Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge, and immediately notify the EPA by contacting Joan Rogers by telephone at 312-886-2785 or email at rogers.joan@epa.gov. Respondent must also immediately notify Eric Ackerman of the Peoria Regional Office of the IEPA at 309-693-5463. In addition, Respondent must document the following information and submit a written report containing such information to EPA and IEPA within five days of becoming aware of the discharge:

- a. the cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing, and any analytical data;
- b. a description of the area receiving the discharge (*i.e.*, field, ditch, stream, or other description);
- c. the specific location of the discharge;
- d. the period of discharge, including exact beginning and end dates and times, and if not corrected, the anticipated time the discharge is expected to terminate;
- e. steps taken or to be taken to respond to, contain, and mitigate the discharge;
- f. corrective action taken to prevent recurrences of the discharge; and
- g. apparent impacts to health or the environment resulting from the discharge, including, but not limited to, threats to surface water supplies, water supply wells, recreational areas, and water quality.

**G. Record Retention and Reporting**

67. Recordkeeping: After the effective date of this Order, Respondent shall maintain at the Site and shall make available to EPA and IEPA personnel upon request copies of records created pursuant to this Order. Such records include:
- a. a complete copy of the Permit Application, including a copy of the nutrient management plan;
  - b. all records required by the nutrient management plan;
  - c. reports of the depth of the manure and process wastewater in storage structures as indicated by the capacity depth markers required by Section IV.D. of this Order;
  - d. records documenting the current design of any storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days that the facility has maintained this storage capacity;
  - e. records of the date, time, and estimated volume of any overflow;
  - f. all results of sampling required by this Order;
  - g. all land application records required by this Order;
  - h. records required by this Order documenting transfers of manure, litter, or process waste water to other persons;

- i. the criteria and procedures for the solids removal and dewatering of storage structures required by this Order;
  - j. records of materials removed from storage structures; and
  - k. inspection records required by this Order.
68. Interim measures: Within 30 calendar days after the effective date of this Order, Respondent shall submit to EPA and IEPA the following documentation concerning the interim measures implemented pursuant to Section IV.B. of this Order:
- a. a detailed description of the interim measures;
  - b. documentation (*e.g.*, as-built diagrams, photographs, affidavits, etc.) showing that Respondent completed installation of the interim measures; and
  - c. an accounting of the costs incurred by Respondent to install, implement, and maintain the interim measures.
69. Annual Reports: Respondent shall submit an annual report to EPA and IEPA not later than March 15 of each calendar year following the effective date of this Order. In each annual report, Respondent shall include the following information for the previous calendar year prior to submittal of that annual report:
- a. the maximum number and type of animals confined, whether in open confinement or housed under roof;
  - b. the estimated amount of total manure, litter, and process wastewater generated at the Site in the previous 12 months;
  - c. the estimated amount of total manure, litter, and process wastewater transferred to another person from the Site in the previous 12 months (tons/gallons);
  - d. the total number of acres for land application covered by the nutrient management plan;
  - e. the total number of acres under the control of Respondent that were used for land application of manure, litter, and process wastewater in the previous 12 months;
  - f. a summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including the date, time, and approximate volume of such discharges; and
  - g. a statement indicating whether the current version of the nutrient management plan was developed or approved by a certified nutrient management planner.



## V. SUBMITTALS

70. Any documents or notifications required by this Order to be submitted to EPA shall be submitted by Respondent to the following address:

Water Enforcement Compliance Assurance Branch (WC-15J)  
U.S. EPA Region 5  
Attn: Joan Rogers  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

71. Any documents or notifications required by this Order to be submitted to IEPA shall be submitted by Respondent to the following address:

Illinois Environmental Protection Agency  
Bureau of Water  
Attn: Bud Bridgewater  
DWPC Compliance Section #19  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9274

72. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

73. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.

### Confidentiality of Submissions

74. You may not withhold information because you claim it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality regarding any portion of the information submitted in response to this

Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA when that person submits the information. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in NPDES permit applications is not entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B.

75. If you do not assert a claim of business confidentiality when you submit the information, the EPA may make the information available to the public without further notice.
76. The EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

## **VI. AGENCY'S CONFERENCE WITH RESPONDENT**

77. This is the second Order which is issued to Respondent. The original Order was issued on April 12, 2013 (Exhibit A, without its exhibits). The Order informed Respondent of his right to request a conference within 10 calendar days of the date of signature of the Order by the Water Division Director. Respondent was informed of his right to request a conference by contacting Joan Rogers at (312) 886-2785, or by having his attorney contact Sherry L. Estes, EPA's Region 5, Office of Regional Counsel at (312) 886-7164.
78. Pursuant to the notice which Respondent received in the April 12, 2013 Order, Respondent requested a conference on April 22, 2013. A telephone conference was held on April 23, 2013 with Respondent and EPA representatives. During the conference, Respondent requested time to pursue an After-The-Fact (ATF) Permit from the Army Corp of Engineers (ACOE); such a permit also requires a CWA 401 Water Quality Certification or a waiver of this certification from the Illinois Department of Natural Resources (IDNR) for a dam structure that was installed in the perennial unnamed stream. Based upon Respondent's request, EPA allowed Respondent time to apply for the ATF permit. On May 22, 2013, Respondent provided to EPA a letter from the ACOE, stating that the dam and the dam building activity is authorized under an existing nationwide permit for minor discharges. On July 11, 2013, Respondent forwarded a letter from IDNR stating that a State 401 Water Quality Certification was not required.
79. Based on the Respondent's having received an ATF permit, EPA is issuing this modified Order. In this modified Order, the finding that the construction of the dam was a violation of the CWA has been removed and the compliance requirement to remove the dam has been eliminated. This Order supersedes the April 12, 2013 Order.

## **VII. EFFECTIVE DATE**

80. This Order shall become final and effective seven calendar days after the date of EPA's signature of the Order.

## **VIII. GENERAL PROVISIONS**

82. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, state or local laws, regulations, ordinances, permits, or licenses.
83. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.
84. Respondent may seek federal judicial review of the modified Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
85. Administrative, Civil and Criminal Enforcement

The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may take one or more of the following actions:

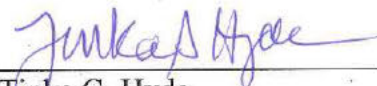
- a. assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$11,000 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and \$16,000 per day for each violation that occurred after January 12, 2009. An administrative penalty action may total up to \$177,500 for actions filed after January 12, 2009;
  - b. seek civil injunctive relief and penalties under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and may seek civil judicial penalties of \$37,500 per day for each violation that occurs after January 12, 2009; or
  - c. seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).
86. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

**IX. CERTIFICATION OF COMPLETION**

87. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit a written certification of completion describing actions taken to comply with all requirements of this Order.
88. After receipt and review of Respondent's certification of completion submitted pursuant to Paragraph 87 of this Order, EPA shall notify Respondent whether all requirements of this Order have been satisfied.
89. This Order shall be effective until EPA notifies Respondent that Respondent has complied with all requirements of this Order.

Date:

August 20, 2013

  
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Tinka G. Hyde  
Director, Water Division